



In the High Court of Punjab and Haryana at Chandigarh

CRA-D-716-DB-2013 (O&M)
Reserved on: 28.11.2024
Date of Decision: 16.12.2024

Ramesh Kumar Appellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Sumeet Pal Singh Khaira, Advocate
for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 27.4.2013, upon Sessions Case bearing No. 72 of 23.7.2010, by the learned Judge, Special Court, Ludhiana, wherethrough in respect of charges drawn against the accused-appellant qua offences punishable under Sections 376, 302, 201 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against him under Sections 376 and 302 IPC.
2. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the accused-appellant in the hereafter extracted manner-

<i>Under Section 302 IPC</i>	<i>R.I. for life. Fine of Rs. 10,000/- is also imposed upon the convict. In default of payment of fine, convict will further undergo R.I. for a period of six weeks.</i>
<i>Under Section 376 IPC</i>	<i>R.I. for life. Fine of Rs. 10,000/- is also imposed upon the convict. In default of payment of fine, convict will further undergo R.I. for a period of six weeks</i>

Both the above imposed sentences of imprisonment, were



ordered to run concurrently but the period of detention undergone by the convict, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

4. In addition, the convict-appellant was also directed to deposit Rs. 30,000/- as victim compensation to be paid to the complainant.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PN is assigned. The narrations carried in Ex. PN are, that on 24.3.2010, complainant Radhey Sham s/o Raja Ram got recorded his statement with Inspector Mandeep Singh, to the effect that he has four children, out of which three are daughters and one son, but now he has two daughters. His daughter, i.e the deceased prosecutrix, aged about 9 years was studying in 3rd class in Moonlight School situated at Noorwala Road, Street No.2, Ludhiana. On 23.3.2010, at about 8.45 P.M., his daughter (deceased prosecutrix) left the house for playing with her friends, but she did not return. The complainant searched for his daughter in Mohalla Lajpat Nagar and in the area of Mohan Nagar, Ludhiana but could not find her. Today complainant along with his landlord namely Ajay Kumar was searching for his daughter. At about 10.30 A.M when they reached in the area of Mohalla Mohan Nagar, Kali Sarak, Ludhiana, they saw people gathered in a plot surrounded by a boundary wall. The complainant and Ajay Kumar went there and saw a dead body lying there covered with a dupatta. On removing dupatta from the dead body, he found it to be the body of his daughter. When the complainant checked the body, he found that blood had oozed from the nose and vagina of his daughter. She was wearing only shirt



and her Salwar was lying near her body, the legs and neck were tied with a dupatta and one foot of the chappal of his wife was lying near the body whereas one chappal was in one foot of his daughter. Complainant suspected that some unknown person/persons had murdered her daughter after committing rape upon her and thereafter thrown the dead body in the plot. On the basis of the said statement, the appeal FIR became registered against the accused.

Investigation proceedings

6. During the course of investigations, place of occurrence was visited and rough site plan was prepared at the spot. Photographs were got clicked. Statements of witnesses were recorded. Blood stained earth, salwar lying near the dead body, voter identity card of Ramesh Kumar were taken into possession vide separate recovery memos. Post-mortem of the dead body was got conducted. The clothes of prosecutrix were taken into possession and became sealed in a parcel sealed with seal LMCH. The statement of Dinesh Kumar S/o Daya Shankar R/o Village Parsia, PS Wazirganj, Distrit Gonda, presently residing at behind Duke Hosierey, PS Salem Tabri was recorded on the basis of which Ramesh Kumar s/o Kismat Lal R/o Golden Vihar Colon, Fabra Road was named in the FIR. During the course of investigations, Gurnam Singh S/o Kartar Singh, R/o Village Dheri, PS Meharban also got recorded his statement about extra-judicial confession made by Ramesh Kumar. On 25.3.2010 accused Ramesh Kumar was arrested vide separate arrest memo. His search memo and information memos were prepared. The accused was got medically examined. The sample of semen of accused was obtained for DNA test and sealed in a parcel. Scaled site plan of place of occurrence was prepared. The vaginal



swabs of the prosecutrix were sent to the office of Chemical Examiner, Kharar. The sample of semen and the vaginal swab was also sent for DNA test at Hyderabad. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

7. Since the offences under Section 376 and 302 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 9.7.2010, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

8. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 302, 376 and under Section 201 IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

9. In proof of its case, the prosecution examined 10 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

10. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. He, however, chose to adduce defence evidence, but did not lead any witness into the witness box.



Submissions of the learned counsel for the appellant

11. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He rests the above submissions on the grounds-

(i) That though the link of making of an extra judicial confession by the accused vis-a-vis his guilt rather is wanting, yet the learned trial Court has erroneously declared the accused to be guilty of the supra formulated charges, merely on the basis of last seeing together of the accused and the deceased, as well as on the basis of makings of an infirm recovery of the voter card of the appellant, thus from the bushes near the dead body of the deceased.

(ii) That the prosecution has been unable to complete all the links in the chain of circumstances, thus to bring home the guilt of the appellant.

(iii) That the depositions of the prosecution witnesses are contradictory and untrustworthy, and, as such their testimonies are liable to be discarded.

(iv) That the DNA report also does not support the prosecution case, as therein, it is mentioned that no male DNA was detected on the vaginal swab of the deceased prosecutrix, thereby the supra vital best forensic scientific link in the prosecution case is also missing.



Submissions of the learned State counsel

12. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Circumstantial evidence based case rested on the depositions of PW-4, who in their testification propagated a version qua his last seen the accused and the deceased together.

13. PW-4 Dinesh Kumar, in his examination in chief, has made echoings, that on 23.3.2010, at about 9.00 P.M., he came to Noorwala Road in connection with some domestic work. When he reached near Shivpuri Chowk, Ludhiana, he saw that accused Ramesh along with deceased victim (the daughter of his sister), aged about 9 years, were going towards Noorwala Road, Ludhiana. He further deposed that upon his inquiring from the accused that where he was taking the prosecutrix, he replied that he was going to take ice cream for her and went towards Kali Sarak along with the prosecutrix. The said witness further testified that since the accused used to visit the house of the prosecutrix and since she and her sisters and brother used to call the accused as uncle, therebys the said witness did not bother. On the next day at about 12.30 P.M., when PW-4 went to the house of his brother-in-law Radhey Shyam, thereupon the said Radhey Shyam informed him, that someone had murdered the prosecutrix after committing rape upon her. The said witness told Radhey Shaym about his having seen accused Ramesh Kumar, while taking the prosecutrix with him and about his nursing a suspicion, that accused Ramesh Kumar had killed the prosecutrix after



committing rape upon her. PW-4 has also identified the accused in Court, and, the said identification then made by the said witness of the accused in Court, remained unbelied. As such therebys the factum of the accused being known to the witness (supra) becomes cogently established, besides therebys, thus there was no necessity qua prior thereto any valid test identification parade being conducted, nor therebys the first time identification in Court of the accused by the witness (supra) suffers from any infirmity.

14. Since neither any suggestions, became put to PW-4 during the latter's cross-examination, suggestive that his speakings (supra) in his examination-in-chief qua his last seeing together the accused, and, the deceased, rather at the apposite site, hence proximate to the crime site, thus are uncreditworthy, nor when theretos any answers favourable to the accused, thus emanated from PW-4. Thus, the effect of no suggestions (supra) becoming meted to PW-4, during the latter's cross-examination, thus to bely the efficacy of the above candidly spoken facts, is that, it leads to an inference that the defence concedes to PW-4 last seeing together the deceased and the accused, thus in the vicinity of the crime site. The effect thereof is but naturally, qua the apposite last seeing together theory, as espoused by PW-4, thus acquiring the firmest evidentiary vigour.

15. The testimony of the witness (supra) also becomes corroborated by the statement of PW-3 Radhey Sham, complainant, who proved on record his statement as recorded before the police (Ex. PC), and, the receipt Ex. PD vide which he had identified the dead body of his daughter i.e. the deceased prosecutrix. PW-3 has also produced an affidavit (Ex. PE), regarding the age of the prosecutrix, which was taken into police possession vide memo

Ex. PF.



16. Moreover, PW-7 Inspector Mandeep Singh has proved the recovery memo Ex PJ whereby the voter card of accused became recovered from the bushes near the dead body of the minor girl, and, to which Ex. PM becomes assigned.

17. Therefore, since the evidence of last seeing together of the accused and the deceased thus becomes credibly spoken by the witness (supra), thereby when the said link becomes cogently established, thereupon there was no necessity for the prosecutrix to lead any evidence vis-a-vis the makings of any purported extra judicial confession by the accused before his confidante, nor thereby the omission of making thereof rather is of any exculpatory worth.

Post-mortem report

18. The post-mortem report, to which Ex. PW-9/A is assigned, became proven by PW-9. PW-9 in her examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased by her along with Dr. Harpreet and Dr. Alka Mittal, thus their noticing thereons the hereinafter ante mortem injuries-

“1. 2 cm x 1 cm reddish blue abrasion was seen on the right side of chin.

2. On examination of the genitalia, the labia majora and minor was congested and swollen. Hymen was absent and bleeding per vagina was present.

3. 0.5 cm abrasion was seen on the left side of the chin.

The internal viscera was found to be congested. Six vaginal swabs were taken. Three were sent for chemical examination for presence of spermatozoa and three were sent for DNA analysis as per police request.



chief, that the cause of demise of the deceased was owing to asphyxia owing to strangulation, as a result of injuries (supra), and, also the said injuries were sufficient to cause death in the ordinary course of nature. The said witness further deposed that the chemical examination report No. 955 dated 9.4.2010 (Ex. PW-9/C) shows the presence of spermatozoa in the vaginal swabs, and, proved her report Ex. PW-9/D.

20. The above made echoings by PW-9, in her examination-in-chief, became never challenged through any efficacious cross-examination, being made upon her, by the learned defence counsel. Therefore, the opinion, as made by PW-9 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-9, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

Report of the FSL concerned, to which Ex. PW-9/C becomes assigned

21. Through memo No. NIL of 24.3.2010, one sealed cloth parcel became sent, through H. Constable Desa Singh No. 530 to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in the sealed cloth parcel, hence made thereons a purported exculpatory opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

2. *The packet consisted of one sealed parcel, sealed with a seal bearing impression on the invoice, hereunto attached, received by me with one seal entire and intact.*

I. *Vaginal swabs (3).*

3. *The above seals were opened in my presence and the contents of the packet were duly examined by me and remained under my immediate custody until examination was completed.*



The result was as follows:-
Spermatozoa were detected in the contents of exhibit-I.”

22. Though, spermatozoa detected in the contents of exhibit-I became declared to not related to the blood group of the accused, but the effect thereof becomes blunted, from the hereinafter incriminatory examinations as became made by the DNA expert, respectively vis-a-vis the source of Exhibit-A (liquid said to be semen of Mr. Ramesh Kumar), and, vis-a-vis the source of Exhibit-B (swabs said to be of deceased victim). Subsequently, the DNA expert in his report, thus pronounced, that both respectively belonging respectively to the victim and to the accused. Conspicuously also when the hereinafter underlined extracted results of the apposite examinations as made over the source of Exhibit-A becomes therein stated to be the semen of Ramesh Kumar, especially also when the results (supra) have not been rebutted through cogent evidence becoming adduced by the defence.

23. In summa, the report of the DNA expert concerned, with therein occurring the supra incriminatory opinion against the accused but underwhelms the effect, if any, of the FSL concerned, failing to firmly pronounce that the spermatozoa found inside the vaginal swab of the deceased-victim, thus not owing its origin to the blood group of the deceased.

DNA Report

24. The report of the DNA specialist working at the FSL concerned, becomes *ad verbatim* extracted hereinafter.

Description of Source

<i>Name of the source</i>	<i>Received/collected on</i>	<i>Exhibit</i>	<i>Exhibit No.</i>
<i>Liquid said to be of semen of</i>	<i>6.4.2010</i>	<i>A</i>	<i>Z52 Se1</i>



Mr. Ramesh Kumar			
Swabs said to be of deceased victim	6.4.2010	B	Z52 Sw1

DNA was extracted from the sources of above exhibits. Microsatellite loci were analyzed using PowerPlex® 16. PowerPlex® Y PCR Amplification Systems and AmpF/STR® Y-Filer® PCR Amplification kit for DNA profiling of the samples. DNA profiles were prepared and analysis were carried out using GeneMapper® software.

Result of Examination

The source of exhibit B (swabs said to be of deceased victim) yielded female DNA profile. The source of exhibit A (liquid said to be semen of Mr. Ramesh Kumar) yielded male DNA profile.

Conclusion

Since the source of exhibit B (swabs) did not yield any male DNA profile, therefore, comparison of the source of exhibit B cannot be done with the source of exhibit A (Mr. Ramesh Kumar) hence, no opinion is furnished herewith.”

25. A reading of the above extracted result, firmly and reiteratedly discloses, that the DNA expert concerned, after making the apposite DNA profilings, proceeded to conclude, that the source of exhibit A (liquid said to be semen of Mr. Ramesh Kumar) yielded male DNA profile, besides concluded that the source of exhibit B (swabs said to be of deceased victim) became yielded from female DNA profile. Resultantly, the supra speakings made in the results of examinations over the samples sent for the DNA profilings to the DNA expert, but conclusively incriminate the accused unless evidence surges-forth, that Exhibit-A i.e. the semen of accused Ramesh Kumar did not become obtained from the accused, through the latter making ejaculation. However, since no evidence becomes adduced, that Exhibit-A stated to be the semen of the accused, and, which became analyzed by the DNA expert, rather was not collected after the accused



making ejaculation. Resultantly, it has to be concluded, that the semen as enclosed in exhibit-A when is stated to be belonging to the accused, thereby the said incriminatory result clearly establishes the charge to the hilt.

Final order

26. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed, besides also the consequent thereto sentence(s), as became imposed upon the convict-appellant, by the learned convicting Court, is also maintained, and, affirmed. If the convict-appellant is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

27. Records be sent down forthwith.

28. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 16th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No